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Return Date: November 16, 2022
Time: 11:30 a.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:

BLUE DIAMOND AIR SYSTEMS, INC

Debtor.

)
)
) **SUPPLEMENT TO CREDITORS'**
) **MOTION FOR ENTRY OF ORDER**
) **DECLARING STAY INAPPLICABLE**

) Chapter 11
) Case No. 8-22-72698-ast
)
)
)

TO: THE HONORABLE ALAN S. TRUST
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Creditors Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund [referred to as "Creditor Funds"] by their attorneys, Blitman & King, LLP, hereby file this Supplement to Creditor Funds' Motion for Entry of Order Declaring Stay Inapplicable (the "Motion") to their efforts to collect their claims from third parties (nonbankrupt entities) and from assets that are not property of the bankruptcy estate, declaring that their efforts do not violate the automatic stay, and declaring that such actions are permitted under the Bankruptcy

Code, New York State Lien Law, New York State Labor Law, and the New York State Finance Law. (Docket No. 23)

1. Attached hereto as Exhibit "A" is Debtor's Confessed Judgment Note admitting it owes at least \$503,879.21 to Creditor Funds for work performed by its employees during the period June 2022 and July 2022.

2. Debtor owes approximately \$1 million in contributions for work performed by its employees during the period June 2022 through October 2022. This claim is entitled to priority under 11 U.S.C. § 507 (a)(4) & (5).

3. Any monies earned by the Debtor as a result of work performed by its employees during the period June 2022 through October 2022 represents Lien Law Article 3-A trust assets. Those monies earned and due to Debtor are not assets of the bankruptcy estate unless the Debtor can show that it has fully paid all trust fund beneficiaries for work performed at its construction projects.

4. On October 27, 2022, the Creditor Funds served Debtor with their Notice Pursuant to F.R.B.P. Rule 2004 together with First Request for Production of Documents. The purpose of the Creditor Funds' Rule 2004 exam is to obtain books and records that will allocate the Creditor Funds' \$1,000,000.00 claim to Debtor's specific construction projects, to determine the amount of accounts receivable outstanding on each of the Debtor's construction projects, to determine the trust claims against each project, and to determine whether the Debtor has improperly diverted its accounts receivable to improper purposes in violation of the New York Lien Law. Debtor has not yet produced the documents or testified in connection with that Rule 2004 Notice. [Attached hereto as Exhibit "B" is a copy of the 2004 Notice with Request for

Production of Documents and cover letter serving same].

WHEREFORE, Creditor Funds respectfully request that this Court enter an Order declaring that the bankruptcy stay is inapplicable to the Creditor Funds' efforts to recover their claims under the PLA, New York Labor Law, the New York Lien Law, the New York State Finance Law from nonbankrupt third parties and assets that are not property of the bankruptcy estate.

Dated: Syracuse, New York
November 15, 2022

BLITMAN & KING LLP

By: 

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